IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

S.A.No.1716 of 1989

1. Padma Ammal
2. Sivagami
3. Sivalingam
4. Neela Ammal .. Appellants

-Vs-

1. Pichandi
2. Kuppusami
(minor represented by
father and guardian
Mr.Pichandi) ..... Respondents

PRAYER:- Against the judgment and decree of the Principal Sub Court, Cuddalore in A.S.No.89 of 1986 dated 30.10.1987 reversing the judgment and decree of the District Munsif Court, Panruti dated 20.4.1985 in O.S.No.839 of 1982.

!For Appellants : Mr.M.Shankar

^For Respondents : No represenation

:JUDGMENT

The appellants are the legal representatives of the deceased plaintiff who laid suit O.S.No.839 of 1982 for recovery of a sum of Rs.3702.00 based on a mortgage deed dated 20.9.1969 marked as Ex.A1.

2. The suit was resisted by the respondents/defendants claiming benefit under the Tamil Nadu Debt Relief Act, 1976 (Act XXXI of 1976).

3. While the plaintiff examined one Sivalingam and marked mortgage deed dated 20.9.1969 on his behalf, the first respondent/first defendant examined himself as D.W.1 and marked 4 documents, of which it is relevant to mention the following documents, namely Ex.B1 the order of the Tahsildar issued under Section 6 of the Tamil Nadu Debt Relief Act, Ex.B2 the order passed by the Appellate Authority in the appeal against the order of the

Tahsildar, and Ex.B3 certificate of income of the respondents/ defendants dated 26.4.1980.

4. The trial Court appreciating the above oral and documentary evidence, by judgment and decree dated 20.4.1985 in O.S.No.839 of 1982 holding that the respondents/ defendants failed to prove that they are small farmers and are entitled for the benefit of Act XXXI of 1976, decreed the suit as prayed for. However, on appeal in A.S.No.89 of 198 6, the learned Principal Subordinate Judge, Cuddalore, by judgment and decree dated 30.10.1987, set aside the judgment and decree of the trial Court and allowed the appeal and consequently dismissed the suit holding that the order passed by the Tahsildar under Section 6 of the Tamil Nadu Debt Relief Act, 1976, marked as Ex.B1, which was consequently confirmed by the Appellate Authority under Section 8 of the Tamil Nadu Debt Relief Act, 1976, marked as Ex.B3, had reached a finality as per Section 7 of the Tamil Nadu Debt Relief Act, 1976, which reads as follows:

"Section: 7 – Finality of orders passed under this Act: Every order of the Tahsildar under Section 5 or Section 6 shall, subject to appeal, under Section 8, be final and shall not be called for question in any Court."

5. Aggrieved by the said judgment and decree of the learned Principal Subordinate Judge, Cuddalore, dated 30.10.1987 made in A.S.No.89 of 1986, the legal representatives of the deceased plaintiff have preferred the above second appeal raising the following substantial questions of law:

Is it not for the respondents/defendants to establish before the Civil Court that they come within the purview of Section 3(f)(3)(I)(i) of Act XXXI of 1976?

6. A plain reading of Section 7 of Tamil Nadu Debt Relief Act, 1976, makes it clear that the order passed by the Tahsildar and the Appellate Authority shall be final and shall not be called for question in any Court. In the instant case, admittedly, the proceedings initiated by the respondents/defendants seeking the benefit of the provisions of Act XXXI of 1976 had reached a finality under Ex.B2, and such an order of the Tahsildar, as confirmed by the Appellate Authority, in my considered opinion, shall be final and shall not be called for question by the Civil Court, as supported by the decision of this Court in PERUMAL Vs. CHINNA KUPPANNA GOUNDER reported in (1981) II MLJ (1) , wherein it is held as under:

"... the redemption of a mortgage provided for under Section 6, if permitted by the Tahsildar, would snap the relationship of mortgagor and the mortgagee between the debtor and the creditor and a certificate of redemption granted by the Tahsildar in the prescribed form would be evidence of redemption. That would mean that the relationship of mortgagor and the mortgagee no longer subsists and the mortgage cannot form the subject-matter of a suit before a civil Court. In other words, the exercise of the powers conferred on the Tahsildar under Sections 5 and 6 of the Act and the granting of relief under Section 4(1)(e) and (f) of the Act, would really wipe out the cause of action itself for the institution of the suit, be it on a pledge or on a mortgage."

7. In view of Exs.B1 and B2, I am of the considered opinion that the respondents/defendants need not establish before the Civil court once again that they are the beneficiaries of the provisions of Act XXXI of 1976. The substantial question of law raised by the learned counsel for the appellants is answered in negative.

In the result, this second appeal fails and is therefore dismissed.
No costs.
1.8.2002
Index: Yes
Internet:Yes

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To:

1. The Principal Subordinate Judge,
Madurai (With records)
2. The District Munsif,
Panruti

Copy to

The Record Keeper
"VR" Section
High Court, Madras.

P.D.DINAKARAN,J.

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